

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MELISSA L VIGIL,
Plaintiff,

v.

MARS, INC., et al.,
Defendants.

Case No. [16-cv-03818-VC](#)

**ORDER DENYING MOTION TO
DISMISS, MOTION TO STRIKE**

Re: Dkt. Nos. 35, 39

The motion to dismiss the first amended complaint is denied. Both sides agree that under FDA regulations, the "serving size" for Ready Rice is calculated by translating the "reference amount" for prepared rice – 140 grams – into cups, which must be expressed in 1/4 or 1/3 cup increments. 21 C.F.R. § 101.9(b)(5)(i). They also agree that when the reference amount falls in between two incremental sizes – say, 3/4 cup and 1 cup – manufacturers are obligated to round to the closest incremental size. *See id.* § 101.9(b)(5)(ix). The Ready Rice label states that the "serving size" for the 140-gram reference amount is 1 cup. Vigil alleges that, in actuality, 218 grams of Ready Rice are required to fill a cup – significantly more than the 140-gram reference amount. Vigil calculates that 140 grams of Ready Rice fills only 2/3 of a cup. In other words, according to Vigil, the Nutrition Facts label on Uncle Ben's Ready Rice should say that its "serving size" is 2/3 cup, not 1 cup. That the label says "1 cup" is allegedly misleading because it leads customers to believe they are getting more rice than they actually are; when customers read on that same label that there are "About 2" servings per container, they will think that the package contains closer to 2 cups, when the package actually contains only about 1 1/3. These allegations are sufficient to state a state-law claim for misleading labeling that is not preempted

by federal law. If true, the allegations would show that Vigil violates the applicable FDA regulations in a way that could cause a reasonable consumer to be misled into thinking that the package contains a greater volume of rice than it actually does. *See Ebner v. Fresh, Inc.*, 838 F.3d 958, 964-65 (9th Cir. 2016).

The request for judicial notice is denied. The motion to strike the second amended complaint is denied as moot.

IT IS SO ORDERED.

Dated: January 9, 2017



VINCE CHHABRIA
United States District Judge